

**SETTLEMENT AGREEMENT AND  
RELEASE IN FULL OF ALL CLAIMS AND RIGHTS**

This Settlement Agreement and Release in Full of All Claims and Rights (Agreement) is entered into between Claimant, AKEMI HILDEBRAND, and the CITY OF SAN JOSE (CITY).

1. This Agreement is given by AKEMI HILDEBRAND (hereinafter referred to as Claimant) in favor of the CITY OF SAN JOSE, its employees and others (hereinafter referred to as CITY).

2. Claimant has filed a claim against the City of San Jose seeking recovery of property and other damages she alleges to have suffered as the result of a June 19, 2007 (2007 Incident) and September 27, 2008 (2008 Incident) (collectively, "Incidents" unless separately identified) grey water intrusion into her property located at 405 River View Dr, San Jose, California ("Property"). For the 2007 Incident, Claimant seeks non-insured losses as described in paragraph 4(a) below.

3. In or about June, 2009, without admitting liability or responsibility for the Incidents, the CITY advanced Claimant the sum of forty-nine thousand dollars (\$49,000.00) to Claimant as partial compensation for the repairs to her Property or for other damages relating to the 2008 Incident.

4. Claimant has now agreed to accept from the City the sum of one-hundred fifty one thousand dollars (\$151,000.00) as additional compensation, for a total of two hundred thousand dollars (\$200,000.00), in full and final settlement of her claims arising out of the Incidents and as consideration for this Agreement.

- a. Claimant was insured for the 2007 Incident. The City acknowledges and agrees, through this Agreement, that Claimant does not seek to pursue, resolve, settle, release or discharge, any claim or cause of action arising from the 2007 Incident for which she was insured and received insurance benefits. This Agreement is not intended to nor does it settle, resolve, release or discharge any claim or cause of action, including rights of subrogation, that Claimant's insurance carrier(s), including any carriers within the Farmer's Insurance Group, may have against the City or any other third party for the insured losses in the 2007 Incident, which claims, demands, causes of action or rights are specifically excluded from this Agreement. Claimant releases all of her non-insured losses associated with the 2007 Incident, and allocates the sum of five thousand dollars (\$5,000.00) of the settlement proceeds identified above for her non-insured losses for the 2007 Incident.

- b. The CITY waives and forever discharges and releases Claimant from any and all claims, demands, losses and causes of action related to (and/or the CITY's ability to recover) any and all costs, benefits, payments, credits, services or fees, incurred in connection with the Incidents, including without limitation, expenses for lodging, relocation, response and clean-up that may have been paid by the CITY on the Claimant's behalf.

5. Claimant releases, acquits and forever discharges CITY, CITY's agents, employees, insurance carriers, subsidiaries, predecessor, successors, and attorneys, from any and all property damage and related claims, demands, losses, causes of action, costs, expenses, attorneys' fees, liabilities, indemnities, subrogation (contractual or equitable), except as excluded as above, duties and obligations, of any nature whatsoever which are in any way connected with the subject matter of this action.

6. Section 1542 of the Civil Code of the State of California provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor."

- a. Claimant represents that Civil Code § 1542 has been read, reviewed with her counsel and understood, and that Claimant hereby waives all present and future rights and benefits under said section for the Incidents to the fullest extent. Claimant does not waive the benefits and rights of this section for any and all claims, known or unknown, unrelated to the Incidents.
- b. Other than the insured losses as identified in section 4a above, which are excluded from this Agreement, as to the Incidents, Claimant assumes all risk for claims, whether known or unknown, suspected or unsuspected, existing or arising in the future, resulting from or related to or connected in any way with the Incidents as described above and thereby agrees that if the facts with respect to which this Agreement is executed and the Release herein provided are found to be different from the facts now believed to be true, Claimant accepts and assumes all risk of such possible difference in facts and agrees that this Agreement shall nevertheless be and remain effective.

7. Claimant acknowledges that the CITY denies liability on account of any claims asserted against the CITY, that this Agreement is a compromise in

settlement of such claims because of the substantial time, effort and expense that would be involved in further litigation, and that this Agreement shall not be construed as an admission of liability.

8. This Agreement specifically includes all claims arising out of the Incidents, other than the insured losses for the 2007 Incident as set forth in paragraph 4a above.

9. Claimant and CITY will bear their own respective costs, expenses and fees, including those of their own counsel in connection with the Incidents and for the negotiations for and execution of this Agreement. Claimant's costs and attorneys' fees are specifically included in the total settlement funds as set forth in paragraph 4 above.

10. Other than the insured losses for the 2007 Incident as set forth in paragraph 4a above, which are excluded from this Agreement, Claimant represents and warrants to CITY that Claimant has not sold, assigned, transferred, conveyed or otherwise disposed of any claim or demand covered by this Agreement to any other person not a party hereto and that Claimant is fully entitled to compromise and settle the same.

11. This Agreement shall inure to the benefit of and bind the heirs, successors and assigns of Claimant and the CITY.

12. The CITY reserves its right to recover its damages incurred as a result of the Incidents, including, without limitation, all settlement proceeds, funds advanced on behalf of Claimant, attorneys' fees and costs associated with the Incidents from any potentially responsible third party.

- a. In the event that the CITY exercises this right and pursues any potentially responsible third party for damages, indemnity or other losses, the CITY, at its sole expense, shall defend, indemnify and hold harmless Claimant from and against any and all claims, actions and demands, including indemnity claims, relating to the City's pursuit of any such third parties, including, without limitation, by filing a Motion for Good Faith Settlement and Order barring and/or dismissing any and all claims of indemnity or contribution.
- b. Claimant hereby waives any conflict of interest that may arise in having attorneys represent both the CITY and the Claimant in such an action.
- c. It is understood that this Agreement does not waive Claimant's rights, claims and defenses, as against, inter alia, any and all potentially responsible third parties pursued by the City. It is

understood that the CITY is not obligated to pursue affirmative relief on behalf of the Claimant.

13. This Agreement is the entire agreement between and among the parties.

14. This Agreement and the obligations required of the parties are contingent upon the approval and acceptance of the CITY and approval in open session. The execution of the Agreement by Claimant shall be null and void, and returned to claimant, should it not be approved by the CITY.

I HAVE READ THIS AGREEMENT AND UNDERSTAND IT.

Executed this 10th day of JUNE, 2010, at SAN JOSE California.

Date:

By: Akemi Hildebrand  
AKEMI HILDEBRAND

Approved as to form and content:

Date: June 10, 2010

MITCHELL, GINGERICH & LOQUACI

By:

Stephen E. Loquaci  
STEPHEN LOQUACI  
Attorney for Ms. HILDEBRAND

Approved as authorized by the San Jose City Council in open session on June 22, 2010.

Date:

RICHARD DOYLE, City Attorney

By:

RICHARD DOYLE,  
City Attorney  
Attorney for the CITY OF SAN JOSE